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Southern Nevada Educational Broadcasters
3185 South Highland
Suite 13
Las Vegas, NV 89109

In re: KVKL(FM), Las Vegas, NV
Facility ID No. 88719
Southern Nevada Educational
Broadcasters ("SNEB")
BPED-20100204ACO

Dear Applicant:

This letter is in reference to: (1) the above-captioned minor change application to modify the effective radiated power, class, antenna height, antenna pattern, and transmitter location; (2) the request for waiver of the contour overlap provisions of 47 C.F.R § 73.509; (3) the February 22, 2010 Petition to Dismiss filed by Nevada System of Higher Education ("NSHE"), licensee of KUNV(FM), Las Vegas, NV; and (4) all other related pleadings. For the reasons set forth below, we deny the petition to dismiss and grant the application.

Petition to Dismiss: On February 22, 2010, NSHE filed a Petition to Dismiss the above referenced application filed by SNEB. NSHE states that the proposed application is an extension of the expired construction permit BPED-20061205ACJ for Las Vegas, NV, which SNEB failed to construct. NSHE further claims that the filing of BPED-20100204ACO would preclude NSHE from filing for the spectrum under the "first come-first served" processing policy. Accordingly, NSHE requests dismissal of the SNEB application.

Waiver Request: An engineering study of the application reveals that it is in violation of 47 C.F.R § 73.509 with respect to second-adjacent channel Class C1 license (BLED-19840906DM) for KUNV(FM), Las Vegas, NV; and third-adjacent channel Class C license (BLED-19850819KW) for KSOS(FM), Las Vegas, NV. Specifically, with respect to KUNV's license, the proposed facility will receive prohibited overlap from KUNV's interfering contour. With respect to KSOS's license, the proposed facility will receive prohibited overlap from KSOS's interfering contour. SNEB recognizes this violation and requests waiver of the contour overlap provisions of § 73.509.

In support of the waiver request, SNEB states that it will not cause interference to KSOS or KUNV. SNEB also believes that the total area of overlap received from KSOS and KUNV constitutes 5.56% and 1.55% of KVKL's 60 dBu contour respectively. SNEB claims that the waiver will allow KVKL to extend its overall 60 dBu coverage area by 2,526 square kilometers, an increase of 63%. In addition, SNEB states that it will provide new service to an estimated 1,060,866 persons, a significant increase from the current 60 dBu population of 6,351 persons. Furthermore, SNEB cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of such overlap in certain cases. SNEB considers the affected area to be *de minimis*, and when considered along with the increased service area, SNEB concludes that waiver of Section § 73.509 is warranted in this case.

Discussion: The filing of SNEB's application for construction permit does not preclude NSHE from making upgrades or modifications to their existing facility. Therefore, SNEB's construction permit will contain a condition that allows NSHE to upgrade its facilities without any limitations or restrictions. Moreover, the grant of SNEB's proposed facility does not disadvantage either licensee in any way, but provides NSHE the potential benefit of increased noncommercial educational service. Accordingly, the February 22, 2010 Petition to Dismiss will be denied.

SNEB's request to receive second and third adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in the *Educational Information Corporation* case. In that case it was stated that:

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service. We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of 47 C.F.R. § 73.509 will be granted.

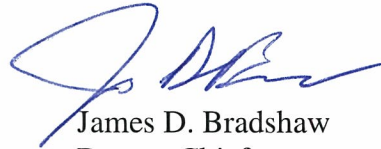
Conclusion. We have afforded the request for waiver of § 73.509 the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justification is sufficient to establish that grant of the requested waiver would be in the public interest. In light of the above, the Petition to Dismiss filed by NSHE on February 22, 2010 IS HEREBY DENIED. In addition, Application File No. BPED-20100204ACO IS HEREBY GRANTED subject to the following conditions.

Further modification of KSOS(FM), Las Vegas, NV, Facility ID No. 20528, will not be construed as a *per se* modification of KVKL's construction permit (BPED-20100204ACO) (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

Further modification of KUNV(FM), Las Vegas, NV, Facility ID No. 68921, will not be construed as a *per se* modification of KVKL's construction permit (BPED-20100204ACO) (*See Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Bradshaw', is positioned above the printed name.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

cc: Nathaniel J. Hardy, Esq.
David Tillotson